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Attorneys for Defendants

WASHINGTON TOXICS COALITION,
NORTHWEST COALITION FOR
ALTERNATIVES TO PESTICIDES,
PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS, and
INSTITUTE FOR FISHERIES RESOURCES,

Case No. C01-0132

FEDERAL DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR CLARIFICATION

VS.

VS.

Intervenor-Defendants

Environment & Natural Resources Div.
U.S. Department of Justice
Ben Franklin Station, P.O. Box 7369
Washington, D.C. 20044-7369
(202) 305-0213

1 In its Order of January 22, 2004 (the "Order"), the Court established certain buffer zones
2 for the 55 pesticides involved in the case, and then excluded from the scope of the Order the use
3 of the pesticides in noxious weed control programs under certain conditions. Plaintiffs have now
4 asked the Court to "clarify" the Order in a way that would prohibit the use of aquatic pesticides
5 in water as part of a noxious weed control program.^{1/}

6 The particular exclusion for which the plaintiffs seek clarification was primarily
7 negotiated between plaintiffs and intervenor defendants. As the Court will no doubt recall,
8 during argument on the interim measures and the specific buffer zones to be applied to specific
9 pesticides, EPA did not take a position on which pesticides should have particular sized buffers.
10 Rather, EPA's position was that none should apply to any pesticides. As a result, EPA generally
11 supported the reduction of the buffer zones or the exclusion of applications from the Order as
12 suggested or proposed by other parties to the litigation.

13 The Order, on its face, does not preclude use of aquatic pesticides directly in salmon
14 supporting waters for noxious weed control, provided certain conditions in the Order are
15 followed. The program authorized by the State of Washington at issue here fits within the plain
16 language of the exclusion.^{2/} On July 26, 2004, the Croplife intervenors ^{3/} filed a response in
17 opposition to the plaintiffs' request for clarification. EPA believes that the Croplife intervenors
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19 ^{1/} EPA notes that plaintiffs' request stems from their dispute with a third party not involved
20 in this litigation, the State of Washington, and is not occasioned by any action or failure to act by
21 EPA.

22 ^{2/} Significantly, plaintiffs mistakenly assert that this exception could "be extended to allow
23 application of any of the covered pesticides directly into salmon supporting waters," because
24 only a small subset of the pesticides affected by the Order are even authorized by EPA for
25 aquatic use at all. Plaintiffs Motion for Clarification at 5 (emphasis supplied). Since very few
26 pesticides are even registered with this type of use, their exclusion from the buffer zones does
27 not have the broad effect suggested by plaintiffs.

28 ^{3/} "Croplife intervenors" refers to the group of intervenors with Croplife America as the
first named in the group. Some of the intervenors are represented by new counsel since the Order
was entered and have filed separate pleadings.

1 July 26, 2004 opposition accurately recounts the argument and negotiation leading up entry of
2 the Order, and for the reasons set forth in Croplife intervenors' opposition, the Court should
3 deny the relief requested by the plaintiffs.

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6 Respectfully submitted,

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13 s/ Wayne D. Hettenbach Date: 7/26/04
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